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## NOTICE OF ALLOWANCE AND FEE(S) DUE

58328 7590 02/19/2010

SUN MICROSYSTEMS / Sonnenschein  
C/O SONNENSCHEIN NATH & ROSENTHAL LLP  
P.O. BOX 061080  
WACKER DRIVE STATION, WILLIS TOWER  
CHICAGO, IL 60606-1080

EXAMINER

DENG, ANNA CHEN

ART UNIT

PAPER NUMBER

2191

DATE MAILED: 02/19/2010

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,069	05/04/2004	Michael L. Boucher	30014200-1110	6646

TITLE OF INVENTION: METHOD AND SYSTEM FOR CODE OPTIMIZATION

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$0	\$0	\$1510	05/19/2010

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

## HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

**PART B - FEE(S) TRANSMITTAL**

Complete and send this form, together with applicable fee(s), to: **Mail Stop ISSUE FEE**  
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**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

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CHICAGO, IL 60606-1080

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

**Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or by facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,069	05/04/2004	Michael L. Boucher	30014200-1110	6646

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nonprovisional	NO	\$1510	\$0	\$0	\$1510	05/19/2010

EXAMINER	ART UNIT	CLASS-SUBCLASS
DENG, ANNA CHEN	2191	717-151000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

"Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

## 3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent):  Individual  Corporation or other private group entity  Government

## 4a. The following fee(s) are submitted:

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- Issue Fee
- Publication Fee (No small entity discount permitted)
- Advance Order - # of Copies \_\_\_\_\_

- A check is enclosed.
- Payment by credit card. Form PTO-2038 is attached.
- The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

## 5. Change in Entity Status (from status indicated above)

a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS; SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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58328	7590	02/19/2010		EXAMINER
SUN MICROSYSTEMS / Sonnenschein C/O SONNENSCHEIN NATH & ROSENTHAL LLP P.O. BOX 061080 WACKER DRIVE STATION, WILLIS TOWER CHICAGO, IL 60606-1080				DENG, ANNA CHEN
				ART UNIT 2191
				PAPER NUMBER
				DATE MAILED: 02/19/2010

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 594 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 594 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	<b>Application No.</b> 10/840,069	<b>Applicant(s)</b> BOUCHER, MICHAEL L.
	<b>Examiner</b> ANNA DENG	<b>Art Unit</b> 2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 1/13/2010.
2.  The allowed claim(s) is/are 1-16.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftperson's Patent Drawing Review ( PTO-948) attached 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_.
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application
6.  Interview Summary (PTO-413)  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

/Anna Deng/  
Primary Examiner, Art Unit 2191

**DETAILED ACTION**

1. This action is in response to amendment filed on 1/13/2010.
2. The rejection under 35 U.S.C, 101 to claims 7-12 is withdrawn in view of applicant's amendment in Specification, page 12.
3. The rejection under 35 U.S.C 102 (e) as being anticipated by Arnold et al. USPN 6,971,091 B1 to claims 1-16 is withdrawn in view of applicant's amendment.
4. Claims 1, 7, 13, and 16 have been amended (see Examiner's Amendment below).
5. Claims 1-16 are pending.
6. Claims 1-16 are allowed.

**EXAMINER'S AMENDMENT**

7. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Tarek N. Fahmi (Reg. No. 41,402) on 2/2/2010 to place the application in condition of allowance.

The application has been amended as follows:

**In the Claims:**

Claims 1, 7, 13, and 16 have been amended as follows:

1. (Currently Amended) A method in a data processing system for optimizing a program, the method comprising the steps of:

automatically analyzing a statistical profile of a program execution; and

automatically optimizing object code of the program based on at least one of the analysis, information about at least one prior compilation of the program, and information about at least one prior optimization of the program,

wherein,

~~the automatic said automatically~~ optimizing includes

determining that ~~additional~~ information additional to the statistical profile is required to optimize the object code of the program,

performing a first compiling of a portion of the program,

executing the first compiled portion of the program,

gathering the ~~additional~~ information additional to the statistical profile,

generating and executing diagnostic code based on the ~~additional~~ information additional to the statistical profile to determine what optimization is required, and

performing a second compiling of the portion of the program using the results generated from executing the diagnostic code, and ~~the automatic optimizing~~ includes

selecting, from among a plurality of optimization techniques and based on logical relations between said plurality of optimization techniques, a not previously tried

one of the plurality of optimization techniques if a previously tried optimization technique was unsuccessful.

7. (Currently Amended) A computer-readable storage medium containing instructions that cause a data processing system to perform a method for optimizing a program, the method comprising the steps of:

automatically analyzing a statistical profile of a program execution; and

automatically optimizing object code of the program based on at least one of the analysis, information about at least one prior compilation of the program, and information about at least one prior optimization of the program,

wherein, ~~the automatic~~ said automatically optimizing includes

determining that ~~additional~~ information additional to the statistical profile is required to optimize the object code of the program, performing a first compiling of a portion of the program,

executing the first compiled portion of the program,

gathering the ~~additional~~ information additional to the statistical profile,

generating and executing diagnostic code based on the ~~additional~~ information additional to the statistical profile to determine what optimization is required, ~~and~~

performing a second compiling of the portion of the program using the results generated from executing the diagnostic code, and ~~the automatic optimizing includes~~

selecting, from among a plurality of optimization techniques ~~and~~ based on logical relations between said plurality of optimization techniques, a not previously tried one of

the plurality of optimization techniques if a previously tried optimization technique was unsuccessful.

13. (Currently Amended) A data processing system for optimizing a program, the data processing system comprising:

a memory having an optimization program that automatically analyzes a statistical profile of a program execution, and automatically optimizes object code of the program based on at least one of the analysis, information about at least one prior compilation of the program, and information about at least one prior optimization of the program,

wherein ~~the automatic~~ said automatically optimizing includes determining that ~~additional information~~ additional to the statistical profile is required to optimize the object code of the program, performing a first compiling of a portion of the program, executing the first compiled portion of the program,

gathering the ~~additional information~~ additional to the statistical profile, generating and executing diagnostic code based on the ~~additional information~~ additional to the statistical profile to determine what optimization is required, ~~and~~ performing a second compiling of the portion of the program using the results generated from executing the diagnostic code, and ~~the automatic~~ optimizing includes selecting, from among a plurality of optimization techniques ~~and~~ based on logical relations between said plurality of optimization techniques, a not previously tried one of

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optimization techniques if a previously tried optimization technique was unsuccessful;  
and

a processing unit that runs the program.

16. (Currently Amended) A data processing system having a processing unit and a  
memory for optimizing a program, the data processing system comprising:

an analysis unit for automatically analyzing a statistical profile of a program  
execution; and

an optimizing unit for automatically optimizing object code of the program based  
on at least one of the analysis, information about at least one prior compilation of the  
program, and information about at least one prior optimization of the program,

wherein

the automatic said automatically optimizing includes determining that additional  
information additional to the statistical profile is required to optimize the object code of  
the program,

performing a first compiling of a portion of the program,  
executing the first compiled portion of the program,  
gathering the additional-information additional to the statistical profile, and  
performing a second compiling of the portion of the program using the gathered  
additional information additional to the statistical profile, and the automatic optimizing  
includes

selecting, from among a plurality of optimization techniques and based on logical relations between said plurality of optimization techniques, a not previously tried one of optimization techniques if a previously tried optimization technique was unsuccessful.

#### ***REASONS FOR ALLOWANCE***

8. The following is an examiner's statement of reasons for allowance:

The cited prior art taken alone or in combination fail to teach, in combination with the other claimed limitations, said automatically optimizing includes determining that information additional to the statistical profile is required to optimize the object code of the program, performing a first compiling of a portion of the program, executing the first compiled portion of the program, gathering the information additional to the statistical profile, generating and executing diagnostic code based on the information additional to the statistical profile to determine what optimization is required, performing a second compiling of the portion of the program using the results generated from executing the diagnostic code, and selecting, from among a plurality of optimization techniques based on logical relations between said plurality of optimization techniques, a not previously tried one of optimization techniques if a previously tried optimization technique was unsuccessful as recite in independent claims 1, 7, 13, and 16.

The closes cited prior art, Arnold et al. (USPN 6,971,091 B1), teaches a method in a data processing system for optimizing a program. However, Arnold et al. fails to teach said automatically optimizing includes determining that information additional to the statistical profile is required to optimize the object code of the program, performing a

first compiling of a portion of the program, executing the first compiled portion of the program, gathering the information additional to the statistical profile, generating and executing diagnostic code based on the information additional to the statistical profile to determine what optimization is required, performing a second compiling of the portion of the program using the results generated from executing the diagnostic code, and selecting, from among a plurality of optimization techniques based on logical relations between said plurality of optimization techniques, a not previously tried one of optimization techniques if a previously tried optimization technique was unsuccessful as recite in independent claims 1, 7, 13, and 16.

These claimed limitations are not present in the prior art of record and would not have been obvious, Thus all pending claims 1-16 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Deng whose telephone number is 571-272-5989. The examiner can normally be reached on Mondays to Fridays 9:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Anna Deng/

Primary Examiner, Art Unit 2191

2/3/2010